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10 UNITED STATES DISTRICT COURT

11 DISTRICT OF NEVADA

12 CAPITAL ONE, NATIONAL
13 ASSOCIATION, a national banking
association,

14 Plaintiff,

15 vs.

16 SFR INVESTMENTS POOL 1, LLC, a
Nevada limited liability company;
17 SOUTHERN HIGHLANDS
COMMUNITY ASSOCIATION, a Nevada
18 non-profit corporation,

19 Defendants.

20 SFR INVESTMENTS POOL 1, LLC, a
21 Nevada limited liability company,

22 Counterclaimant/Cross-Claimant,

23 vs.

24 CAPITAL ONE, NATIONAL
ASSOCIATION, a national banking
25 association; and EILAT BENARON, an
individual,

26 Counter-Defendants/Cross-
27 Defendants.

Case No. 2:15-cv-01324-KJD-PAL

**JOINT MOTION TO STAY
LITIGATION**

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1 Plaintiff Capital One, National Association (“Capital One”), defendant SFR
2 Investments Pool 1, LLC (“SFR”), and defendant Southern Highlands Community
3 Association (“Southern Highlands,” and together with Capital One and SFR, the
4 “Moving Parties”) hereby move to stay litigation in this case. In support of this joint
5 motion, the Moving Parties state as follows:

6 1. This is a quiet title action arising from an HOA foreclosure sale (the
7 “Sale”) of a residential property located at 5004 Benezette Court, Las Vegas, Nevada
8 89141 (the “Property”).

9 2. Nominal defendant Southern Highlands conducted the Sale and
10 defendant SFR submitted the highest bid at the Sale.

11 3. Plaintiff Capital One argues, among other things, that the notice
12 provisions of NRS Chapter 116 are facially unconstitutional under the Due Process
13 Clause of the Fourteenth Amendment.

14 4. In Bourne Valley Court Tr. v. Wells Fargo Bank, NA, 832 F.3d 1154 (9th
15 Cir. 2016), the Ninth Circuit Court of Appeals accepted this argument and held that
16 Chapter 116’s notice provisions facially violate due process by requiring purported
17 junior lienholders to “opt in” for notice of a sale.

18 5. In Saticoy Bay LLC v. Wells Fargo Home Mortg., No. 68630, 133 Nev.
19 Adv. Rep. 5 (2017), the Nevada Supreme Court disagreed with Bourne Valley by
20 holding that a foreclosure sale under Chapter 116 does not involve sufficient state
21 action to implicate the Due Process Clause of the Fourteenth Amendment. The
22 Nevada Supreme Court did not address whether the notice provisions of Chapter 116
23 require purported junior lienholders to opt in for notice.

24 6. The non-prevailing parties in Bourne Valley and Saticoy Bay have
25 indicated they will petition the United States Supreme Court for certiorari to resolve
26 the split between the Ninth Circuit and Nevada Supreme Court. See Application to
27 Extend the Time to File a Petition for a Writ of Certiorari, Bourne Valley Court Tr. v.
28

1 Wells Fargo Bank, NA, No. 16A753 (Jan. 19, 2017); Motion to Stay Remittitur,
2 Saticoy Bay (No. 68630).

3 7. Capital One further argues that 12 U.S.C. § 4617(j)(3) bars a foreclosure
4 sale under NRS Chapter 116 from extinguishing a deed of trust owned by the Federal
5 Home Loan Mortgage Corporation without the consent of its conservator, the Federal
6 Housing Finance Agency.

7 8. The Ninth Circuit heard oral arguments on this issue on February 17,
8 2017 in the cases Elmer v. JP Morgan Chase Bank, N.A., No. 15-17407, and
9 Berezovsky v. Bank of Am., N.A., No. 16-15066.

10 9. The Nevada Supreme Court has scheduled oral arguments on this issue
11 for March 7, 2017. See Notice of Oral Argument Setting, Nationstar Mortg., LLC v.
12 SFR Invs. Pool 1, LLC, No. 69400 (Nev. Jan. 26, 2017).

13 10. The Moving Parties request a stay of litigation to allow the United
14 States Supreme Court to address the certiorari petitions in Bourne Valley and
15 Saticoy Bay and to allow the Ninth Circuit and Nevada Supreme Court to decide the
16 appeals in Elmer, Berezovsky, and Nationstar.

17 11. The Moving Parties agree to submit a joint status report to the Court
18 every 90 days after the date of the order granting this joint motion.

19 12. The Moving Parties further agree that each report will inform the Court
20 of the status of the certiorari petitions in Bourne Valley and Saticoy Bay and of the
21 appeals in Elmer, Berezovsky, and Nationstar.

22 13. The Moving Parties further agree that each report will inform the Court
23 of whether the Moving Parties wish to keep the stay of litigation in place or lift the
24 stay.

25 14. The Moving Parties further agree that any party to the case may
26 independently move to lift the stay at any time.

27 15. The Moving Parties further agree that SFR's motion to certify a question
28 of law (ECF No. 58), SFR's motion for partial summary judgment (ECF No. 59),

Capital One's motion for summary judgment (ECF No. 63), and SFR's motion to strike (ECF No. 68) should be withdrawn without prejudice.

Dated: February 24, 2017.

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ATTORNEYS FOR SOUTHERN HIGHLANDS COMMUNITY ASSOCIATION

ORDER

FOR GOOD CAUSE APPEARING, and based upon the foregoing joint motion:

IT IS HEREBY ORDERED that litigation in this case is stayed due to the forthcoming petitions for certiorari in the Bourne Valley and Saticoy Bay cases and due to the pending appeals in the Elmer, Berezovsky, and Nationstar cases.


IT IS HEREBY FURTHER ORDERED that plaintiff Capital One, defendant SFR, and defendant Southern Highlands shall file a joint status report every 90 days after the date of this order.

1 **IT IS HEREBY FURTHER ORDERED** that each report shall inform the Court
 2 of the status of the petitions for certiorari in Bourne Valley and Saticoy Bay and of
 3 the appeals in Elmer, Berezovsky, and Nationstar.

4 **IT IS HEREBY FURTHER ORDERED** that each report shall inform the Court
 5 of whether Capital One, SFR, and Southern Highlands wish to leave the stay of
 6 litigation in place or lift the stay.

7 **IT IS HEREBY FURTHER ORDERED** that any party to this case may
 8 independently move to lift the stay at any time.

9 **IT IS HEREBY FURTHER ORDERED** that SFR's motion to certify a question
 10 of law (ECF No. 58), SFR's motion for partial summary judgment (ECF No. 59),
 11 Capital One's motion for summary judgment (ECF No. 63), and SFR's motion to
 12 strike (ECF No. 68) are withdrawn without prejudice.

13 
 14 UNITED STATES DISTRICT JUDGE

15 Dated: — March 3, 2017 —

16 Respectfully submitted,

17 BALLARD SPAHR LLP

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